IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Goddard, et al.
Appl. No.	:	10/063,596
Filed	:	May 3, 2002
For	:	SECRETED AND TRANSMEMBRANE POLYPEPTIDES AND NUCLEIC ACIDS ENCODING THE SAME
Examiner	:	Sandra L. Wegert
Group Art Unit	:	1647

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants received a Notice of Allowability and Examiner's Statement of Reasons for Allowance mailed from the USPTO on January 10, 2007. Applicants submit the following Comments on the Examiner's Statement.

> Applicant relies on more than 140 references (see IDS filed 03/09/06), where expression levels of mRNA, measured by quantitative PCR, were found to have a good correlation to the expressed protein levels. ... While the PTO found several references in which protein expression levels did not correlate with mRNA levels measured by quantitative PCR, the majority of the references which were found, including those cited by Applicant, demonstrated a correlation between mRNA levels measured by quantitative PCR and protein expression levels. Applicants assert that the expression levels of protein correlate to mRNA (cDNA) levels when the cDNA is measured by quantitative PCR (i.e. rtPCR). Applicant has provided more than 140 references in support of this position. *Notice of Allowability* at 3-4 (emphasis added, citation omitted).

Applicants have submitted as exhibits numerous references in support of their assertion that, generally speaking, differential mRNA expression levels (e.g., tumor tissue vs. normal tissue) result in similar differential expression levels of the encoded protein. In addition,

Applicants have submitted several Information Disclosure Statements listing numerous additional references, including those submitted as exhibits. Applicants have not represented to the PTO that all of the references submitted to the PTO in an IDS support Applicants' assertions.

Applicants have also argued that statements by the authors of Hu *et al.* (J. Proteome Res. 2003; 2(4):405-12), and LaBaer (Nature Biotech. 2003; 21:976-977), regarding the significance of differential mRNA expression detected by mRNA microarrays are not relevant to the data relied on by Applicants. Applicants' data in Example 18 of the instant application are based on RT-PCR, which is recognized by those of skill in the art as more sensitive and reliable than mRNA microarrays, and therefore the opinions of Hu and LaBaer regarding the significance of differential mRNA data from microarrays is not relevant to the instant application. Applicants' have not argued that microarray data are not reliable, or that all of the supporting references relied on by the Applicants' used quantitative RT-PCR to measure mRNA levels.

Finally, Applicants note for the record that they do not necessarily agree with the PTO's characterization of the references cited in the Examiner's statement of reasons for allowance. Applicants do agree with the PTO's conclusion that "[b]ased on the totality of evidence of record, one of skill in the art would find it more likely than not that an increase in message as measured by RTPCR would be predictive of an increase in protein expression levels, absent evidence to the contrary."

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: Feb. 2 2007

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